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SUBJECT: SOME TRANSPARENCY AND MAS COMPROMISE IN NEW
SUPREME COURT APPOINTMENTS

Summary

11. (SBU) After nearly two months of deliberations, Bolivia's congress successfully voted on the appointment of four new supreme court judges in a process that while not fully transparent, was a marked improvement over the past. Historically the congressional approval process was opaque, based on political deals in which the main political parties held closed door sessions and each party negotiated for its judicial candidates. Despite much rancor between the Movement Towards Socialism (MAS) and PODEMOS (the main opposition party), the two sides reached an accord and developed a mostly transparent and merit based approval process based on ten basic criteria as well as written and oral exams. Civil society representatives from the USAID supported "Citizens' Participation and Justice Network" were allowed to observe the process. Voting began on July 10, and after six rounds, congress reached the required two-thirds majority for each of the new judges on July 12. To reach the two-thirds, some back room deal-making between MAS and PODEMOS was still necessary. The cooperation between the MAS and PODEMOS, the inclusion of civil society observers, and the relative transparency of the process in general is a positive precedent for Bolivia, despite the last minute deal-making. End Summary

The Context

12. (U) The supreme court, which is made up of twelve justices, has been short four justices for over a year. Throughout 2006 congress never reached the two-thirds majority required to fill the vacancies so President Morales filled them with interim appointments during congress' December 2006 recess. Morales was handed a setback when the constitutional tribunal deemed that his appointees could not serve for more than 90 days, again leaving the supreme court with four vacancies. (Note: In response to the constitutional tribunal's decision, Morales instigated impeachment proceedings against four of the five constitutional tribunal magistrates. End Note). In the past, the congressional

approval system was based on "cuoteos" (political deals). The main political parties held closed door sessions and each party negotiated for its judicial candidates based more on party loyalty than on experience or merit. Since the system was neither transparent nor based on a nominee's particular merit confidence in the judicial branch suffered.

The Initial Selection Criteria

¶3. (U) Despite much rancor within congress, including marathon insult sessions between the MAS and the opposition, the two sides reached an accord and developed a seemingly transparent and mostly merit based approval process. On May 22, the parties reached an agreement to only allow candidates from the departments of La Paz, Cochabamba, Oruro, and Tarija as these departments had no justices on the supreme court. While not a rule, customarily the bench is filled with a judge from each of the nine departments. On May 30, congress approved ten basic criteria for considering potential nominees. To be considered eligible a nominee could not have:

- ¶1. Served as a public servant during military regimes;
- ¶2. Defended narco-traffickers in a judicial proceeding;
- ¶3. Defended the privatization of state-run companies;
- ¶4. Defended an embassy or foreign entity against the GOB;
- ¶5. Violated the rights of another person;
- ¶6. Any legal cases pending against him/her;
- ¶7. Any disciplinary sentences for serious offenses;
- ¶8. A close blood tie to a congress member or high level GOB employee;
- ¶9. Served as a political activist; or
- ¶10. A politically affiliated position that offers a stipend.

Making the Grade

¶4. (U) Congress requested information on each candidate from four institutions as well as the general public to see how each candidate stacked up against the ten criteria. The national election court verified each candidate's political activism (or lack thereof). The judicial council checked on any pending cases against each candidate. The state prosecutor investigated each applicant's police record. Finally, the Judiciary's Disciplinary Committee researched whether or not applicants had ever received disciplinary sanctions. Congress also asked the general public to come forward with documented accusations against any of the candidates. Of the initial 179 candidates only 15 nominees remained on July 3, the day in which each had to complete a written and oral exam. Each candidate also had to deliver a fifteen minute presentation covering three topics; his/her view of the Bolivian justice system; the judiciary's function; and what aspects of the system need improving. Based upon all the aforementioned criteria each candidate was assigned a score based on his/her merit.

Civil Society Participation

¶5. (SBU) Civil society representatives from the "Citizens' Participation and Justice Network" acted as observers in the selection process. The network, a group of over 100 Bolivian non-governmental organizations supported by USAID through Partners of the Americas, provided volunteers that observed the final selection process. The network's oversight included supervising the written and oral exams and the ranking of the candidates. Although the GOB was initially reluctant to grant the network access, the Congressional Joint Constitutional and Justice Committee thanked the group for its participation.

The Results are In

¶6. (U) The first round of voting started on July 10. No candidate received the necessary 105 of 157 votes, despite an earlier agreement by both parties to vote for the most meritorious candidates (per the candidates' scores). An additional five rounds followed. After the first four rounds, congressmen from the MAS and PODEMOS got together and forged an agreement in which they would split the four justices, two for the MAS, two for PODEMOS. Representatives from the National Unity (UN) and National Revolutionary Movement (MNR) parties denounced the back room deal as a return to the quota system of the past. (Note: It is ironic that the MNR representatives should denounce the quota system as the MNR was one of the primary architects of the system. End Note). On the evening of July 12, congress reached the necessary two-thirds votes for the four appointees. The candidates selected by department are:

(a) La Paz -- Teofilo Tarquino Mujica, 63 years old with 36 years of legal experience, received 114 votes in the fifth round of voting. He answered four out five questions correctly on the written exam. Tarquino was selected over Marlene Teran who received the highest merit score of all the candidates.

(b) Cochabamba -- Jose Luis Baptista Morales, 74 years old with 34 years of legal experience received 129 votes in the fifth round of voting. Despite having the highest merit score of the nominees from Cochabamba, he only answered one of five questions correctly on the written exam (!).

(c) Oruro -- Angel Irusta Perez, 61 years old with 27 years of legal experience, received 126 votes in the sixth round of voting. Mr. Irusta answered four out five questions

correctly on the written exam. Mr. Irusta was selected over Rodolfo Fuentes Borda who had a higher merit score.

(d) Tarija -- Hugo Suarez Calvimontes, 50 years old with 26 years of legal experience, received 120 votes in the sixth round of voting. Mr. Suarez had the highest merit score amongst the Tarija nominees and answered all five questions correctly on the written exam.

Comment

¶7. (SBU) While the selection process was relatively transparent and based on the candidate's relative merits, some observers noted that the candidate pool overall did not reflect the best Bolivia could offer in terms of qualifications and expertise. Critics argue that more highly qualified lawyers chose not to participate as candidates due to the continuing uncertainties of the selection process and recent threats to both the supreme and constitutional courts. However, the improvements in the selection process may encourage better candidates to participate in the future.

¶8. (SBU) The cooperation between the MAS and PODEMOS, the inclusion of civil society observers, and the relative transparency of the process in general is a real precedent for Bolivia. Civil society organizations from the Citizens' Participation and Justice Network plan to continue advocating for transparent merit-based selection processes for justice sector officials. Meanwhile, PODEMOS is quietly claiming a political victory as this was the first time the MAS has had to compromise and strike a deal with them. End Comment.
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